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No. 82-669

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

SIDNEY L. SOFFER,

Petitioner,

vs.

CITY OF COSTA MESA, JAMES T. WEIR and ROBERT R. CAMPAGNA,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITIONER'S REPLY MEMORANDUM

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The City's Brief in Opposition is reminiscent of the old flim-flam man at the traveling side show with three shells and a pea. The "mark" could not find the pea if he had four chances - let alone one. The shells are the misrepresentations and the half-truths, and the facts are the pea.

Petitioner will attempt to point out enough facts in Respondents' Brief

show that he had been deprived of his property under color of law without due process.

I Color of Law and Deprivation

Respondent, James Weir, a Zoning Officer of the City of Costa Mesa, inspected three vehicles on Petitioner's property, determined the vehicles were inoperative and constituted a public nuisance within the meaning of City of Costa Mesa Ordinance 73-13 (Respondents' Brief in Opposition pp 3,4,5). On November 8, 1977, Weir had the vehicles towed and temporarily stored. (R.B. p.6). Three days later, Petitioner paid $127.50 to reimburse the City for towing and storage charges. (R.B. p. 7). Petitioner accepts the above statements of the City to be true and therefore, establishes the first piece of the puzzle: Color of Law and the Deprivation of Property.

II Due Process

1. Hearing

On November 8, 1977, 14 days after the notices were issued, no request for a hearing had been received and the vehicles were still parked in Petitioner's front yard. Weir had the vehicles towed. (R.B. p.6).

Petitioner accepts the above statement of the City to be true, with the exception of "front yard." (The three vehicles were parked to the rear of the property and on a driveway.)

Petitioner has alleged throughout this action that he did not have a hearing and opportunity to be heard, either before the deprivation or after. As the City has failed to show a hearing at any time, the Court will, hopefully, accept it as an uncontested fact, the Petitioner had no hearing. Thus, we have one more piece to the puzzle.

2. Notice

At this point the shells are being moved faster and faster, making it much more difficult to find the pea.

On October 25, 1977, Respondent, Weir "issued" Petitioner three written notices of the City's intention to abate the nuisances. Each notice explained that Petitioner had 10 days to initiate a request for a hearing and upon failure to do so, the City would abate the nuisance without a hearing (R.B. p. 5). The City admits receiving the three notices from Petitioner upon which the printed phrase "Request a Public Hearing" had been circled, on November 8, 1977 - 14 days after said notices were "issued." (R.B. p.6). The City also states the notices were received in the "mail" after the towing of the vehicles. Petitioner takes issue only

to the word issued and whether or not the City received the notices before or after the towing. The word "issued" is a half-truth, as the notices were "mailed" to Petitioner. A seemingly small point, except for that fact it would lead one to believe that the notices were delivered to Petitioner - instead of mailed, in which case, there would not be, by law, an extension of four or five days for service by mail. (Calif. Vehicle Code Section 23 and California Code of Civil Procedure Sec. 1013). The time of day the City received the notices could also be critical as to whether or not the City received them before the towing. It is the contention of the Petitioner that the City policy at the time was to pick up the mail at the post office at about 7:30 a.m. (this was not brought out on the record). Petitioner mailed the three requests for

hearing on November 4, 1977, the tenth day, per instructions on the notices. It is the contention of the Petitioner that the puzzle should be complete. He timely requested a hearing, received none, was deprived of his three vehicles and $127.50 without a hearing, under Color of Law, and therefore, deprived os his constitutionally guaranteed right to due process.

III Misplaced Reliance

Respondents' reliance on California Vehicle Code, Section 4000 and 5202 for the definition of the term "inoperative vehicle" (Appellee's Brief p. 12) is misplaced as the the two sections are only two small parts of the law. Therefore, another of the many half-truths submitted to the courts by the City.

IV Petitioner's Vehicles Were Legal and Operable

Petitioner admits that the two Sections of C.V.C. 4000 and 5202 do state that a vehicle may not be operated on the highway unless it is currently registered and with its license plates attached and visible (R.B. p. i). However, the City fails to point out to the court that Section 5203 of C.V.C. states that Section 5202 does not (emphasis added) apply to license plates which the department pursuant to law, ordered the plates surrendered. Petitioner's 1947 Cadillac and 1960 Cadillac both had their plates surrendered prior to Petitioner buying them. They both had temporary permits on their windshields.

1. Section 4606 of C.V.C. states that when application for registration has been made, the vehicle may

be operated on the highways until the new registration is received and license plates are displayed on the vehicle - "if any."

2. Section 4604 states that a nonoperated vehicle may be operated or left standing upon the highway if the registration had expired, provided, the department receives an application and certificate of nonoperation within 20 days after the vehicle is first operated or left standing upon any highway. As the three vehicles were not on the highway, they were, as such, legal and could, therefore, have been driven, for up to 20 days, without plates or current registration.

Even if the above sections somehow did not apply to Petitioner's three vehicles, the 1960 Cadiallac was legal and operable as it was currently registered on the day it was towed

away. (Appellant's Opening Brief, Appendix F).

V. No Public Nuisance

As to the judgment for Respondents in this civil rights action being correct because the jury necessarily found that Petitioner maintained a public nuisance (R.B. p. ii), the only reasons Respondent, Weir gave for abating the vehicles were that the vehicles were not currently registered and were in violtion of City ordinance 72-13. (R.T. p. 32 1.10).

Petitioner contends that something that is not a nuisance per se or in fact, cannot be made a nuisance merely by an ordinance. "The question of nuisance or obstruction must be determined by general and fixed laws, and it should not be tolerated that the local Municipal authorities of a City declare any particular business or structure, a

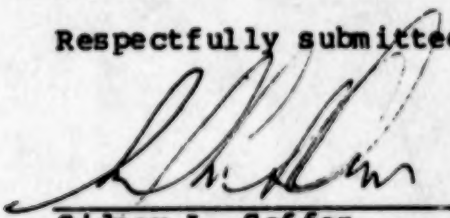
nuisance, in such a summary mode, and enforce its decision at its own pleasure. Yates v. Milwaukee 77 U.S. 497 at 498.

CONCLUSION

It is the contention of Petitioner that thousands of vehicles are being towed and destroyed all over California under unconstitutional ordinances similar to 73-13 and therefore, a very important issue. The Legislature did not mean to give the City the power which it attempts to exercise; and if it did mean to do so, it had no power to give it. Ordinance 72-13 allows for the towing of a vehicle from private property solely because the City inspector thinks it is inoperative and the owner does not request a hearing. The ordinance then demands the destruction of

the vehicle (Petition for Writ Appendix "D" p 22). Accordingly, the Petition should be granted.

Respectfully submitted,



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